



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1998

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR98-0598

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113176.

The McAllen Police Department (the "department") received a request for all information related to number 97-40536. You claim that the requested information is excepted from required public disclosure by sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). We believe access to this information is governed by provisions outside the Open Records Act. The Seventy-fifth Legislature, repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon), (to be codified at Transp. Code §550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Association, et al., v. Morales, et al.*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth et al.* 163 Tex. 616, 617 358 S.W.2d 589 (1962). The Supreme Court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Telephone Co.* 526

S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of SB 1069 is governed by section 47 of article 6701d, V.T.C.S.¹

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with the statutorily required information. Thus, you must withhold the accident report under section 47(b)(1)(D) of article 6701d, V.T.C.S.

You also argue that the requested information is confidential under the Family Code because it involves juvenile conduct. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” We have previously found that section 58.007 of the Family Code does not make confidential juvenile law enforcement records concerning juvenile conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies. Open Records

¹Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov’t Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414.

Decision No. 644 (1996). However, the Seventy-fifth Legislature passed House Bill 1550 which amends the Family Code. Act of June 2, 1997, H.B. 1550, 75th Leg., R.S., ch. 1086, § 20, 1997 Tex. Gen. Laws 4179, 4187. Juvenile offender records held by law enforcement agencies are now expressly confidential under section 58.007(c) of the Family Code. Notwithstanding, section 58.007(c) only applies to juvenile law enforcement records concerning conduct that occurred on or after September 1, 1997. The relevant language of amended Family Code section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records; and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Open Records Decision No. 644 (1996) continues to apply to records concerning juvenile conduct that occurred from January 1, 1996 to August 31, 1997. Section 58.007(c) of the Family Code only applies to juvenile law enforcement records concerning juvenile conduct occurring on or after September 1, 1997, that are maintained by law enforcement agencies. Juvenile law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose. Act of June 2, 1997, H.B. 1550, 75th Leg., R.S., ch. 1086, § 53, 1997 Tex. Gen. Laws 4179, 4199.

Here, the requested information involves juvenile conduct that occurred after September 1, 1997. Thus, the records are made confidential by amended section 58.007 of the Family Code. Accordingly, you must withhold the requested information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 113176

Enclosures: Submitted documents

cc: Mr. Belen Zamarripa
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McAllen, Texas 78501
(w/o enclosures)